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CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. LINO CORTEZ-CARRASCO, aka Jorge Carrasco-Cortez, Defendant - Appellant.	No. 03-50021 D.C. No. CR-01-00773-HBT MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Howard B. Turrentine, District Judge, Presiding

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. LINO CORTEZ-CARRASCO, Defendant - Appellant.	No. 03-50025 D.C. No. CR-01-03311-NAJ

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Southern District of California
Napoleon A. Jones, Jr., District Judge, Presiding

Argued and Submitted October 10, 2003
Pasadena, California

Before: REINHARDT, FERNANDEZ, and RAWLINSON, Circuit Judges.

Defendant-Appellant Lino Cortez-Carrasco challenges his conviction following a jury trial for violating 8 U.S.C. § 1326, and contests the revocation of his supervised release.

Cortez-Carrasco assigns as error: (1) the district court's denial of his motion to dismiss the indictment for failure to allege voluntary entry and for error in instructing the grand jury; and (2) the district court's failure to instruct the petit jury that it must find voluntary entry to convict.

There is no need to plead voluntary entry in an indictment unless there is some evidence of an involuntary entry. *See United States v. Parga-Rosas*, 238 F.3d 1209, 1214 (9th Cir.), *cert. denied*, 534 U.S. 942 (2001) (stating that while voluntary entry may be an important element of proof in some cases, the crime of being "found in" the United States does not require that voluntary entry be pled in the indictment).

Cortez-Carrasco's argument that the trial jury should have been instructed that it must find voluntary entry in order to convict fails for similar reasons. A reasonable jury may infer that the defendant voluntarily intends to be in the United States when he is found anywhere within the country other than at the border and no evidence of involuntary entry is introduced. *See United States v. Quintana-Torres*, 235 F.3d 1197, 1200 (9th Cir. 2000), *cert. denied*, 532 U.S. 953 (2001); *see also United States v. Castellanos-Garcia*, 270 F.3d 773, 777 (9th Cir. 2001). Cortez-Carrasco's conviction suffers from no infirmity.

Revocation of Cortez-Carrasco's supervised release was predicated upon the validity of his conviction for violating 8 U.S. C. § 1326. Thus, our conclusion that his "found in" conviction stands defeats Cortez-Carrasco's challenge to the revocation of his supervised release.

Finally, Cortez-Carrasco's challenge to the grand jury instructions is foreclosed by our decision in *United States v. Marcucci*, 299 F.3d 1156, 1164 (9th Cir. 2002).

AFFIRMED.